SWAMI RAMANAND TEERTH MARATHWADA UNIVERSITY, NANDED

SYNOPSIS ON

Changing Dimensions of Right to Property under the Indian Constitution- A Critical Study

Submitted by

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Introduction:

Human being is the unique living creature in the world. An ability to think makes human being different than that of other animals. The history of evolution proves how the man lived in caves and now thinking to settle on the Moon and Mars. In this journey he needed basic things like food, shelter and clothing. When food was abundant, he never needed to control it. The scarcity of food propelled him to invent agricultural. Similarly for overall development he needed certain things. Without these things he could not survive. Therefore, he gradually started controlling the things. Exercising bundle of right over a thing transformed that thing in to property. The concept of property is as old as the human civilization. But with due course of time the concept underwent changes. Not only that, even nature and scope of the concept of property also is being changed. The emergence of the law and state aimed to regulate one's control over the property. That played a lead role in shaping right to property in contemporary times.

The Natural law speaks of natural rights, which flows from the nature or divine source. According to Jonh Locke man inherits certain natural rights that include right to life, liberty and property from his birth itself. Therefore, the government is duty bound to protect it. His idea has been given importance under the Constitution of United State of America through amendment V.[1] According to this "No person shall be…. deprived of life, liberty, or property… nor shall private property be taken for public use, without just compensation." According to Roscoe Pound there exists three categories of interest in any political society. Namely individual interest, public interest and societal interest. Interests are basically claims, desires, wants or expectations which are asserted by the man *de facto*. The law and legal system have

[1] No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

to take in to account these interests and evolve mechanism to sought balance amongst them. He states that, man has interest in own property which needs to be protected.

The whole history of mankind is interwoven and connected to right to property. The international human rights law has also given primacy to the right to property. Article 17 of the Universal Declaration of Human Rights aims to guarantee everyone's right to own property and assures that he will not be arbitrarily deprived of his property.

According to, John Locke Right to life, liberty and estate are basic natural rights required for any human being. This requires need to protect right to property. Therefore, right to property has been included fundamental right in US constitution. The *eminent domain* doctrine also reserves right of the State to acquire private property by paying just compensation. This doctrine puts limits on right to property, which means this right is not absolute one.

In his writings Dr Ambedkar[2] proposed that "No State shall make or enforce any law or custom which shall abridge (violate) the privileges or immunities of citizens; nor shall any State, deprive any person of life, liberty and property ……..." (Emphasis supp). The Constituent Assembly aimed to empower the powerless and ensure respect for individual rights. In this regard the Assembly discussed on the issue of guaranteeing right to property to the citizen. In doing so the state would be expected to act as representative of the people. The Indian Constitution went further in guaranteeing right to property as a fundamental right under Article 19 (1) (f). It guaranteed right to acquire, hold and dispose off the property within this scope of right. In other words the right to property was included in the Constitution as a fundamental right under Articles 19(1)(f) and Article 31. In *State of West Bengal v. Subodh Gopal Bose*[3] the Supreme Court held that right to property is a fundamental right. In *Penna Cement Industries Ltd. v. State of Andhra Pradesh*[4] held that right to property includes right to access and enjoy the property. The Supreme Court has also tried to define and determined the scope of right to property. It held that the State cannot acquire property without providing a clear public purpose and adequate compensation.[5] subject to With due course of time, the right to property was deleted from Part III of the Constitution by the Constitution (Forty-fourth Amendment) Act, 1978. At the same time, a modified version was inserted under the Constitution. Now the right to property has been constitutionally protected under Article 300A.

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[2] States and Minorities, DrBAWS, Vol. 1, p. 394.
[3] [1954] 1 SCR 587.
[4] (2020) 10 SCC 702.
[5] Siddharth Shankar Ray v. State of West Bengal (2022) 3 SCC 161.

Although the right to property has lost its nature being a fundamental right, the provision has been characterised as a constitutional and human right. In *Jilubhai Nanabhai Khachar v. State of Gujrat*[6] the court held that right to property is not basic feature of the Constitution. The right has to be interpreted in the context of *eminent domain*. In *K. T. Plantation Pvt. Ltd. v. State of Karnataka*[7], the Supreme Court ruled that the right to property is not absolute and could be restricted in the interest of public. This further reduced the scope of right to property. Article 39 (b) of the Constitution provides for the Directive Principles of State Policy to be followed by the State as "that the ownership and control of the material resources of the community are so distributed as best to sub serve the common good;" In extension to that State shall, in particular, direct its policy towards securing "that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.[8]" These provisions justified Land Acquisition Acts limiting the scope of right to property of citizen.

Land acquisition is the process under which the land owned by private persons is compulsorily acquired by the State. In other words it could be distinguished from the purchase of land. Sale or purchase of land is a contract between a seller and a buyer on mutually acceptable terms with free consent. In case of Acquisition the land owner has no choice over parting with the land. He is forced to relinquish his right to property. Therefore, the process of acquisition overrides the property rights of the private land owner. This can be justified only for the greater public benefit in taking away someone's land ownership rights.[9] The Land Acquisition Act, 1894 had wider dimension. It reflected *eminent domain* doctrine in India. It narrowed down the scope of private property. After introduction of new economic policy governed by liberalisation, privatization and globalization the right to property is on the verge of change. The Act of 1894 has replaced with new law named as the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013 (2013 Act) which governs land acquisition. The law requires consent of 70% land owners if the land is supposed to be acquired for Public-Private Partnership projects. Further, the consent of 80% land owners required private project. This means, the scope of right to property widened. Under the 2013 Act, land can be acquired only for projects that have a "public purpose". Before acquisition Social Impact Assessment (SIA) requires to be done to determine whether the

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[6] 1995 Supp. (1) SCC 596.
[7] [2011] 13 SCR 636.
[8] Article 39 (c).
[9] https://prsindia.org/billtrack/prs-products/prs-legislative-brief-2459#:~:text=The%202013%20Act%20differed%20from,PPP)%20or%20a%20private%20company.

potential benefits of the project outweigh the social costs. If the land is to be acquired for public private projects (PPPs) and private companies that would require consent of 70% and 80% of the land owners, respectively. But recently in *Property Owners Association and Ors v. State of Maharashtra and Ors*[10] the scope of right to property is being tried to be redefined. In this case the court has opined that, "The interpretation of Article 39(b), both as a pre-cursor to the protection of Article 31C and an essential Directive Principle, cannot run counter to the constitutional recognition of private property. To hold that all private property is covered by the phrase "material resources of the community" and that the ultimate aim is state control of private resources would be incompatible with the constitutional protection. [11] In the majority judgment written by *Dr. Dhananjay Chandrachud*, CJI, while addressing the issue whether the phrase 'material resources of the community' used under Article 39 (b) includes privately owned resources, considered theoretically that it may include. But has considered that not every resource owned by an individual could be considered as a material resource of the community merely because it meets the qualifier test of being material needs. In interpreting so the court opined that judges in earlier precedents erred. But in minority dissenting judgement written by *B. V. Nagrathna*, J opined that ".. privately owned resources except "personal effects" … can come within the scope and ambit of the phrase "material resources of the community…" Similarly in dissenting judgement *Sudhanshu Dhulia,* J also affirmed that the meaning of phrase "material resources of the community" is extensive. Majority judgment judgements expands the scope of individual's right to property but the minority judgement argues that individual's property right is inferior to that of property right guaranteed to the public at large in the interest community. Though the judgement has taken a stand in favour of individual's right it has also opened the door for right to property dynamically. This has further posed hurdle before acquisition of privately owned resources, land acquisition for the welfare of people.

Statement of Problem:

The Right to Property, a cornerstone of individual liberty, has undergone significant transformations in the Indian Constitution. Its evolution from being a fundamental right to a constitutional right has raised very important questions about the balance between individual rights and societal needs i.e. balancing of interests. Before, the *Property Owners Association*

[10] [2024] 11 S.C.R. 1 : 2024 INSC 835.

[11] Id. Paras 217, 220.

and Ors v. State of Maharashtra and Ors[12] the weight was in favour of societal interest. But, this case has given different turn. This has brought to light many questions, whether scope of the right to property is being widened? What will be the future of eminent domain? What will be the future of Article 39 (b) and (c)? What will be the future of welfare state?

Aims and Objectives:

The researcher proposes following aims and objectives of the research.

1. To analyse the historical development of the Right to Property in India.
2. To analyse the constitutional jurisprudence of right to property.
3. To study the scope of Article 39 (b).
4. To critically analyse the majority judgement in *Property Owners Association and Ors v. State of Maharashtra and Ors*.
5. To critically analyse relevant judicial precedents.

Signification of the Study:

Till date vast research has been done on right to property. But the ramifications of new economic policies upon Directive Principles of State Policy is yet to be researched in depth, Apart from this judicial precedents have also tried to change the course of constitutional jurisprudence. The proposed research, in this regard would clearly determine the scope of right to property.

Area of Research:

The proposed research will be confined to right to property in the context of the then Articles 19 (1) (f), 31, present Articles 39 (b), (c), 300A, relevant judicial decisions by the Supreme Court and precisely the judgement delivered in *Property Owners Association and Ors v. State of Maharashtra and Ors*.(2024)

Review of Literature

The researcher has extensively referred books, articles, research papers etc., which could be summarised as follows.

[12] [2024] 11 S.C.R. 1 : 2024 INSC 835.

Dr. Ambedkar, States and Minorities, Dr Babasaheb Ambedkar Writings and Speeches, Vol. 1. In his writings Dr Ambedkar has argued and proposed in favour of right to property. He proposed that "No State shall make or enforce any law or custom which shall abridge (violate) the privileges or immunities of citizens; nor shall any State, deprive any person of life, liberty and property ……..."

Ganguli, A.K., Right to property: Its Evolution and Constitutional Development in India, 48 Journal of the Indian Law Institute, no. 4 (2006).

Ganguli's article traces the evolution and constitutional development of the right to property in India. It also explores the historical context of property rights in India, from ancient times to the British colonial era. The author has analysed the development of the right to property under the Indian Constitution, including right to property under the then Article 19(1)(f) and Article. It provides a comprehensive understanding of the evolution and constitutional development of property rights in India, focussing the complexities and nuances of this fundamental right.

Hidayatullah, M., Right to Property and the Indian Constitution (New Delhi: Calcutta University-Arnold-Heinemann, 1983).

M. Hidayatullah's book provides an in-depth analysis of the evolution of property rights in India and the right to property under the Indian Constitution.

Sathe, S.P., Right to Property after the 44th Amendment: Reflections on Prof. P. K. Tripathi's Observations, AIR 1980 SC (J) 97 (1980).

S.P. Sathe's article is a response to Prof. P.K. Tripathi's observations on the right to property after the 44th Constitutional Amendment. Sathe analysed the impact of the 44th Amendment on the right to property, which was removed as a fundamental right. The author has discussed the significance of Article 300-A, which guarantees the right to property, albeit as a constitutional right rather than a fundamental right.

Jain, M.P., Indian Constitutional Law (8th ed., Gurgaon: LexisNexis, 2018).

The author has discussed the transformation of right to property as a fundamental right to constitutional right.

Hypothesis:

The researcher proposes following Hypothesis;

1. Constitutional Jurisprudence of Right to property has transformed in post of 44th Amendment period.
2. Scope of right to property is being widened through judicial interpretation.
3. Scope of material resources of community mentioned under article 39 (b) is shrinking.
4. Property Owners Association case negates societal interest.
5. *Property Owners Association and Ors v. State of Maharashtra and Ors* has laid negative impact upon concept of welfare state.
6. Property Owners Association case adversely affect spirit of Art. 39 (b) and (c) of Indian constitution.

Research methodology:

The researcher, in this proposed research, would use books, articles, research papers, research work, judicial decisions. This will require extensive use of secondary data available in the library. Therefore, the proposed research would employ doctrinal research method.

Chapterization

The tentative chapters' scheme is as follows. The proposed research work is divided into seven chapters.

- **Chapter I :** Introduction
- **Chapter II :** Right to Property-Jurisprudential Aspects
- **Chapter III :** Right to Property- International Perspectives
- **Chapter IV :** Right to Property -Constitutional Perspectives
- **Chapter V :** Right to Property – Judicial Approach
- **Chapter VI :** Changing Dimensions of Right to Property- A Critical Study
- **Chapter VII :-** Conclusion and Suggestion

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